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SUMMARY RECORD OF THE 1128th MEETING

Held at Headquarters, New York,
on Friday, 27 March 1992, at 10 a.m.

Chairman: Mr. POCAR

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The meeting was called to order at 10.25 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of Algeria (CCPR/C/62/Add.1) (continued)

1. At the invitation of the Chairman, Mr. Benamara and Mr. Sahraoui (Algeria) took places at the Committee table.

2. The CHAIRMAN invited the representative of Algeria to respond to questions raised by the members of the Committee during the consideration of Algeria's initial report.

3. Mr. BENAMARA (Algeria) expressed his delegation's gratitude for the words of encouragement which members had spoken with regard to human rights protection in Algeria and for their useful comments and questions. The questions on the initial report fell into five main groups, which he would address in turn, namely, the exceptional circumstances obtaining in Algeria in recent months; the electoral process; the situation of a number of specific rights and freedoms guaranteed by the Covenant; national institutions; and the status of the Covenant in the national legal system.

4. The initial report predated the declaration of the state of siege on 4 June 1991 and thus contained no information on it. The state of siege had been decreed for a period of four months, and in accordance with article 4 of the Covenant, the Secretary-General had been notified of the Government's action on 19 June 1991. The state of siege had been lifted on 29 September 1991, before the end of the four-month period, and the Secretary-General had been duly notified of that action as well. The legal basis for the declaration of the state of siege was article 86 of the Constitution. Civil disturbances had continued for over a week, creating a situation of public danger and posing a threat to the operation of the Government. All constitutional provisions had been respected, as had articles 4 and 5 of the Covenant. The state of siege had entailed derogations from article 9, paragraph 3, article 12, paragraph 1, article 17, article 19, paragraph 2, and article 21 of the Covenant. Five detention centres had been established and a total of 1,000 people had been held in those centres. As a result of the disturbances resulting in the declaration of the state of siege, 55 deaths had been reported, including members of the police and armed forces. All detainees had been released when the state of siege was lifted, except those convicted of criminal offences.

5. A state of emergency had been declared on 9 February 1992 for a duration of 12 months. It could be lifted before the end of that period if the situation stabilized. The Secretary-General had been notified on 13 February 1992 of derogations from article 9, paragraph 3, article 12, paragraph 1, article 17 and article 21 of the Covenant. Article 86 of the Constitution had been again invoked as the legal basis.

(Mr. Benamara, Algeria)

6. Six security detention centres had been established, where a total of 8,800 detainees were being held. No women or minors were being detained. So far 2,500 of the detainees had been tried, and 1,420 convicted. Guidelines had been issued to the personnel of the centres on respect for human rights. Family visits had been allowed, and a number of humanitarian organizations had visited the centres, including the Algerian League for Human Rights and Amnesty International. The authorities had pledged to respect the findings of those human rights organizations and to alter conditions in the centres if necessary. As a result of the events resulting in the declaration of the state of emergency, 99 deaths had been reported as of 19 March, including those of 23 members of the police and security forces.

7. In response to questions on the use of firearms by the police, he indicated that guidelines on the use of deadly force had been issued. Unfortunately, abuses had been noted, and investigations were being carried out.

8. As far as the composition of military tribunals was concerned, there were two military magistrates, but a civilian magistrate presided. All the military magistrates had legal training. In normal times, such tribunals had jurisdiction for military offences or criminal offences occurring within military establishments, but during the state of emergency, their competence had been extended to violations of state security. Such tribunals followed the normal procedure for investigation and trial, and their decisions could be appealed.

9. A question had been asked about the detention of members of some political parties. The individuals in question had not been detained because of their political opinions, but rather for violations of the Associations Act, which prohibited the promotion of fanaticism or incitement to violence.

10. Turning to the electoral process, he said that the dissolution of the National People's Assembly and the resignation of the President had created a situation not anticipated by the Constitution. The provisions of its article 84 did not cover that particular situation. Consultations among the President of the Constitutional Council, the head of the Supreme Court, the army and the High Council of Security had been held regarding ways to provide continuity and normal functioning for the State. They had reached the decision that it was impossible to continue the electoral process, that public order and security must be protected and that the High Council of Security would assume and retain the executive power until the constitutional crisis had passed.

11. A number of questions had been asked concerning legislative protection of rights and freedoms guaranteed under the Covenant. It had been noted that the legal conditions for the formation of political associations appeared to be at variance with article 5 of the Covenant. There was no contradiction, however, since the Islamic morals and values of the Revolution invoked were enshrined

(Mr. Benamara, Algeria)

in the preamble to the Constitution and in its article 2, which proclaimed Islam as the State religion. The political parties had been dissolved on the basis of those sections of the Associations Act which prohibited incitement to violence. The dissolution of the political parties was currently being appealed before the Supreme Court.

12. On the subject of torture or ill-treatment, he indicated that the Committee on Torture had recently examined the periodic report of Algeria. Such conduct was prohibited by the criminal laws of Algeria and perpetrators were brought to justice. A number of investigations of reported incidents involving the police forces were currently under way.

13. The death penalty could be imposed in Algeria for murder, for certain crimes against the national security, such as treason or espionage, and for sabotage against the national economy. Questions had been raised as to whether the death penalty for economic offences was justified, but, in practice, no such sentences had been carried out in over 30 years, and the usual procedure was commutation to imprisonment. Consideration was being given to the possibility of abolishing the death penalty. A death sentence could be appealed to the Supreme Court, through an application for judicial review of the facts, and an appeal could be made for a presidential pardon. In the past year, five sentences of death had been imposed, all for murder.

14. Algerian legislation provided for the possibility of compensation for judicial error, but so far no case had been brought before the courts. Compensation could also be sought for unlawful detention, in conformity with article 9 of the Covenant; in such cases the individual ordering the unlawful detention was held responsible.

15. Under normal circumstances, individuals could be held in police custody without charge for 24 hours. For offences against national security, that period was doubled. Imprisonment for debt per se did not exist in Algeria. Creditors could pursue their claims through the courts and only where a debtor failed to comply with such orders as might be made by the court would the possibility of imprisonment arise. Even so, given the very stringent conditions laid down in the Code of Civil Procedure, there had never been any instance of imprisonment for debt in Algeria.

16. As to the loss of civil and civic rights, a citizen could forfeit those rights if convicted of certain crimes or if they had engaged in behaviour that was contrary to the interest of the country during the Revolution. The Government determined what constituted such behaviour, but its decisions could be appealed. Those provisions did not constitute unreasonable restriction in violation of article 25 of the Covenant.

17. With regard to equality of the sexes, measures had been taken to provide women access to education and vocational training so as to equip them to enter the work force. Though still small, the number of employed women was growing

(Mr. Benamara, Algeria)

steadily. Once a woman reached the age of majority, she had complete control over her own money, irrespective of her marital status. To clarify questions regarding the dowry, a woman was not required to provide a dowry; rather the man was required to provide for his future wife. Polygamy, which was discouraged by the Koran and severely restricted by the Algerian Family Code, appeared to be dying out.

18. With regard to freedom of the press, the question had been raised as to whether the prohibition of offences against the State or against Islam or other religions was in conflict with article 19 of the Covenant; in his view, it was not, because paragraph 3 of that article stipulated that the exercise of the right to freedom of expression carried with it special duties and responsibilities and could be subject to certain restrictions provided by law. As to foreign policy constituting a limit on freedom of the press, that applied only in the case of offences against a foreign head of State or the members of diplomatic missions. Verification of the accuracy of publications could take place only through legal channels, either in the case of persons claiming defamation, or in the case of allegedly false information affecting the security of the State. The distribution of foreign periodicals in the country was permitted.

19. In reply to the question regarding the right to form trade unions, he said that restrictions on that right in the interests of national security were in conformity with article 22 of the Covenant; however, he knew of no cases in which trade unions had been refused the right to organize.

20. Concerning the status of aliens, he said that in accordance with article 22, paragraph 2, of the Covenant, approval could be withheld from foreign associations in the interests of public order or national security. He had no information on whether aliens had equal access to the courts. As mentioned in paragraph 159 of the report, the Code of Penal Procedure contained a provision benefiting aliens, in accordance with article 14, paragraph 7, of the Covenant. Foreign correspondents were subject to accreditation, as was customary in other countries.

21. With regard to the question of the nationality of the children of aliens married to Algerian citizens, he said that the child of an Algerian mother and a foreign father was given an opportunity to reject Algerian citizenship one year before attaining majority.

22. As Berber culture was considered to be an integral part of the Algerian identity, Berber-speaking persons were not viewed as constituting an ethnic or linguistic minority. Efforts were being made to promote the Berber language through the national media, education and the development of a writing system. Defendants in criminal proceedings who did not speak Arabic could call on the services of an interpreter.

(Mr. Benamara, Algeria)

23. As to whether all the religions practised in Algeria were entitled to equal protection under the law, article 298 of the Code of Penal Procedure prohibited all offences against any person on religious grounds. The status of Islam as the State religion was not incompatible with freedom of conscience because the Algerian State was a republic which did not impose Islam on its people. Other religious communities existed, namely, Jewish and Christian; only monotheistic religions were practised in the country. The State provided subsidies and assistance to all religious institutions without discrimination.

24. Turning to the questions relating to the judiciary, he said that the requirement that judges must have 10 years of service in order to attain permanent tenure had been introduced only recently; experience would show what the real import of the measure was. It should be noted, however, that the decisions of lower-court judges were reviewed by those at higher levels, who had permanent tenure. Furthermore, since some jurisdictions did not have enough judges, it was important to maintain flexibility in judicial appointments.

25. The High Council of the Judiciary consisted of 25 members, 19 of whom were judges. It was chaired by the President of the Republic because the presence of the latter, as the guardian of the Constitution, was felt to be symbolic.

26. With regard to the protection of the judiciary, the careers of judges were supervised by their peers, and disciplinary actions were taken by the High Council of the Judiciary. The Constitution charged the legislature with devising means of protecting judges from all forms of pressure; the High Council of the Judiciary was one of those mechanisms.

27. In some jurisdictions, people's assessors were elected to serve on the criminal, commercial and juvenile courts; they were entitled to participate in discussions and vote on judicial decisions.

28. The Constitutional Council consisted of seven members, of whom two were appointed by the President of the Republic, two were elected by the National People's Assembly and two were elected by the Supreme Court. Members served a single six-year term and were eligible for three-year terms thereafter. The President of the Constitutional Council was appointed by the President of the Republic for a single 10-year term. Experience would show whether that arrangement reduced the independence of the Constitutional Council. The reason why matters could be brought before the Constitutional Council only by the President of the Republic or the President of the National People's Assembly was that Algeria was a representative democracy. The legislature and the President together represented the two sources of law. In the case of conflict between the legislative and the executive branches, the Constitutional Council acted as an arbiter. The Constitutional Council could not examine the constitutionality of international treaties, as it dealt only with domestic law.

(Mr. Benamara, Algeria)

29. The electoral law had been examined by the Constitutional Council; a provision enabling husbands to vote on behalf of their wives had been abolished.

30. With regard to the role of the Covenant in Algerian law, the Constitution had been promulgated prior to the ratification of the Covenant; accordingly, the constitutional provisions had not been based exactly on the corresponding provisions of the Covenant. While in principle the Covenant took precedence over domestic legislation, the courts had not yet ruled on the matter. The executive branch as a whole was responsible for overseeing the implementation of the Covenant through the Ministries of Foreign Affairs, Justice and the Interior.

31. No international human rights treaties had been abrogated since the Constitution had been promulgated.

32. Lastly, a range of institutions, including university law faculties, police academies and training institutes for staff serving in penitentiaries participated in the efforts to make the provisions of the Covenant known to the public.

33. Mr. SADI expressed appreciation to the Government for its detailed replies and the valuable information provided, all of which reflected the seriousness with which Algeria viewed its dialogue with the Committee.

34. In his view, the central issue was the problem that had arisen when the democratic process had been interrupted. The decision to declare a state of emergency had set in motion a series of events which, in turn, had given rise to further questions. On the one hand, with regard to Algeria's commitment to article 1 of the Covenant, he had noted with satisfaction the statement in article 6 of the Constitution that the people were the source of all power. On the other hand, the Revolutionary Council had declared that if the Islamic Salvation Front took power, it would deal a death blow to the democratic process. Accordingly, a paradoxical situation had arisen, in which the commitment to democratic principles might lead to a situation in which the people's wishes were no longer respected.

35. The question was whether such a conflict could have been resolved on the basis of the Covenant, by allowing the democratic process to take its course, provided that the Constitution was preserved and protected, regardless of the outcome of the elections. It was to be hoped that the Government could address that question, perhaps at a later stage. The disturbances of public order in the country were, of course, a legitimate concern.

36. Mr. FODOR said that until the middle of 1991, Algeria had been making good progress towards the implementation of the Covenant, particularly by adopting a new Constitution which had opened the door to a multi-party system. Unfortunately, the declaration of the two states of emergency had set back that process.

(Mr. Fodor)

37. Substantial changes had recently occurred in the country, making it difficult to assess the situation objectively. However, the picture given in the Government's initial report and actual conditions in the country did not appear to coincide, partly because the report had focused on the relevant legislation, omitting any factual data, and partly because the events which had been taking place since 1991 were impeding the full observance of the relevant constitutional provisions. Perhaps further details should have been provided in the Government's introductory statement and replies to questions. Furthermore, a supplementary report should have been transmitted. Nevertheless, the information provided was sufficient to enable the Committee to identify the major concerns with regard to the implementation of the Covenant.

38. Concerning the elimination of discrimination based on sex, not only should current practice be improved, but the legal provisions establishing certain grounds for discrimination should be repealed.

39. With regard to article 4 of the Covenant, while he was grateful for the information provided on the state of emergency, it would have been helpful if the Algerian representative had elaborated on the justification for declaring a state of emergency twice in one year and on whether the strict conditions laid down in the Covenant had been complied with.

40. The Covenant permitted the imposition of the death penalty only for the most serious offences, which clearly did not include economic crimes. Several instances had been reported in which prisoners had died in police custody; the State party should adopt effective measures to prevent such occurrences.

41. Above all, the sources of political conflict should be eliminated; that was the sine qua non of any continuation of the democratic process in Algeria.

42. Mr. PRADO VALLEJO welcomed the new information provided by the representative of Algeria, which would help the Committee in understanding the situation. However, he was concerned at the considerable disparity between theory and practice with regard to laws for the protection of human rights. That was particularly true in the case of detentions, where in theory defendants were entitled to a fair trial, but in practice often faced serious obstacles. In some cases, defendants were not informed of the charges against them and were denied access to their family, to medical care and to legal aid, while in others military tribunals refused to accept the lawyers they had chosen. He also had doubts about the composition of military tribunals, which were composed of one civilian magistrate and two military officers. Such officers did not possess the necessary legal expertise and were not properly qualified for the functions concerned.

43. He also felt that recent allegations of torture had not been properly investigated and was concerned at the misuse of firearms by the forces of order, particularly against peaceful demonstrations. What instructions had the police and security forces been given and were they complying with them?

(Mr. Prado Vallejo)

44. The authorities must make greater efforts to improve the human rights situation, particularly with regard to respect for all strands of political opinion and the need to abide by election results, since such concerns were fundamental to a democratic system.

45. Mr. ANDO said that democracy could sometimes be a cumbersome and exacting process, but he hoped that the authorities would pursue that process, since the only alternative was dictatorship.

46. On the question of equality between the sexes, he wanted to know if there were any plans for the country to accede to the Convention on the Elimination of All Forms of Discrimination against Women. With regard to the independence of the judiciary, he acknowledged the explanation given by the representative of Algeria concerning participation by the President in judicial organs, but felt that experience had shown that the principle of the separation of powers was a much more important factor; he therefore called on the authorities to reconsider their position. With regard to the rights of minorities, he was concerned that the country's Constitution denied the existence of various elements in Algerian society, with its emphasis on Islam as the only religion and Arabic as the only language. Minorities did exist - the Berbers were a cast in point - and needed the protection provided for under article 27 of the Covenant. He hoped that more information on the subject would be forthcoming in the second periodic report.

47. With regard to the status of the Covenant in the domestic legal system, he noted that international treaties took precedence over ordinary laws, while the Constitution took precedence over treaties. In that connection, he was not sure how the reference to the values of Islam and the Revolution, contained in the preamble to the Constitution, could be reconciled with certain provisions of the Covenant. Again, he hoped that more information would be available in the next report.

48. Miss CHANET said that the replies given by the representative of Algeria had clarified a number of points and had acknowledged the difficulties encountered in the democratic process. The Constitution of 1989 and the laws adopted during 1990 had been positive steps, and the establishment of the national human rights monitoring body was to be welcomed. However, she felt that the incorporation of the Covenant into national law was still largely theoretical and that not enough had been done to disseminate knowledge of its provisions among the population and the judiciary. She was also concerned at the suspension of the electoral process and of the National Assembly, which should still be meeting on a permanent basis in order to monitor the use of the special powers being employed to deal with the exceptional circumstances prevailing in the country.

49. The high number of arrests and detentions was also a cause for concern and she felt that the right to challenge a defendant's lawyer, frequently exercised by military tribunals, was a breach of article 14 of the Covenant.

(Miss Chanet)

50. She regretted that the investigation of the alleged cases of torture had so far failed to produce any significant results. With regard to the death penalty, she recalled the general comment regarding article 6 of the Covenant to the effect that its use was not justified for economic offences.

51. She welcomed the replies concerning the time-limits on police custody, but regretted that no reply had been given to the question concerning medical inspections, which were provided for in law but frequently neglected. She was concerned at the conditions under which suspects were held in administrative custody and pointed out that, although Algeria had derogated from article 9, paragraph 3, of the Covenant, the provisions of article 9, paragraphs 1 and 4, were still applicable.

52. She also shared the concerns expressed by Mr. Ando about the independence of the judiciary and the rights of minorities.

53. Mr. WENNERGREN felt that the replies given by the representative of Algeria had been very general and academic. That was understandable given the current circumstances, when it was difficult to discuss the practical application of the legal system. He expressed concern at the suspension of the democratic process, but hoped that ultimately it would prove to have been an appropriate measure which would benefit the population.

54. The representative of Algeria had stated that the freedoms and rights provided for in the Covenant were all protected by legal provisions. However, he had not replied to his own question concerning the right of a detainee to contact his family immediately provided for in article 45 of the Constitution, and as to how that right was protected in law, given that the penal code did not appear to contain any specific provisions on the matter.

55. Mr. MÜLLERSON thanked the Algerian delegation for clarifying many questions that had not been sufficiently covered in the written report. Algeria's second periodic report should deal not only with constitutional and legal provisions but also with factors and difficulties encountered in the application of the Covenant. It would be useful to have details and statistics on the most important issues.

56. The Algerian delegation should give a brief assessment of the events that had led to the annulment of the results of the general elections held in December 1991.

57. He did not understand how Islam could be the state religion of Algeria if other religions enjoyed the same rights as Islam. Moreover, it appeared that there were many ethnic, religious and linguistic minorities in Algeria, and he joined Miss Chanet in requesting more information about the protection of minorities.

58. Mr. DIMITRIJEVIĆ said that, while the initial report of Algeria reflected that country's sincere efforts to protect human rights, there was not very much information about the practice of the courts and the actual workings of democracy. Moreover, the Committee had not received any information on factors affecting and difficulties experienced in the implementation of the Covenant.

59. It would be useful if the Government of Algeria prepared a short supplementary report providing substantive reasons for its declaration of the state of emergency. The Committee was chiefly interested in how the state of emergency affected the application of articles 9 and 14 of the Covenant.

60. The number of detainees in Algeria was very high and gave rise to concern. Even when composed of trained lawyers, the military courts should be considered as special courts in all situations where they dealt with civilians, especially in cases involving State security. A general problem of the Algerian judicial system was that, in many cases, the accused had no access to legal aid when the trial involved a sentence of less than five years. He also had doubts about the vague values proclaimed in the Constitution and repeated in the Law on Political Associations. Algerian laws should be made clearer and should not refer to such broad concepts as the Revolution and Islam, which could be easily abused.

61. Algeria should provide more information regarding the position of women and the equality of the sexes. It was clear that ethnic, religious and linguistic minorities existed in Algeria. A State could not circumvent the application of article 27 of the Covenant by declaring that minorities did not exist. The unity of the Algerian nation would not be jeopardized if the Government allowed its citizens to express their individual characteristics, as long as that did not prevent them from performing their civic duties.

62. Mr. EL-SHAFEI thanked the Algerian delegation for its replies, which had shed new light on issues that had not been entirely clear to the Committee. The constructive dialogue that Algeria had begun with the Committee should continue.

63. The events in Algeria were a reflection of what was taking place in the region and throughout the world. With respect to the state of emergency, the Government of Algeria should establish a dialogue between the parties concerned with a view to reaching an understanding and restoring the rule of law. That meant that one or two parties that were currently unable to participate effectively in a dialogue should be permitted to do so.

64. The CHAIRMAN commended the competence with which the Algerian delegation had responded to the questions raised by the Committee. The report and the discussion had demonstrated how much progress had been made in Algerian legislation.

(The Chairman)

65. Some members of the Committee had requested additional information on the state of emergency and how it affected civil and political rights. He hoped that the Government of Algeria would provide such information in a future report. The Algerian delegation had informed the Committee that the state of emergency, which had been declared for one year, could be lifted sooner than planned. He hoped that that would be the case so that Algeria could continue to consolidate its democratic reforms.

The meeting rose at 1 p.m.